

Group II: claims 9-15, drawn to a process of making a semiconductor interlayer insulating film, classified in class 438, subclass 758.

In response to the Examiner's restriction/election requirement, Applicant elects, with traverse, to prosecute Group I including claims 1-8 and 16-18. Applicant specifically reserves the right to file a divisional application directed to non elected claims 9-15.

Applicant further directs the Examiner's attention to M.P.E.P. § 803 which states:

"If the search and examination of an entire application can be made without serious burden, the Examiner must examine on the merits, even though it includes claims too distinct or independent invention." (emphasis added)

There are two criteria for a proper requirement for restriction. The invention should be independent or distinct, and

"2) there must be a serious burden on the Examiner if a restriction is not required. See M.P.E.P. §803.092, 806.04 A through J, 808.01(a) and 808.02."

According to MPEP §803, if the search and examination of an entire application can be made without a serious burden, the Examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions. As evidence of the undue burden, the Examiner has listed that class 257/subclass 643 is to be searched for Group I, and class 438/subclass 758 is to be searched for Group II. In view of: i) the likelihood that a significant portion of the patents belonging in class 257/subclass 643 would also be classified in class 438/subclass 758, and ii) the fact that the computer searching software used by the Examiner enables the Examiner to combine the search for patents in multiple subclasses without having to view duplicates, the search of the extra subclass(es) would not amount to an undue burden on the

Examiner to consider all of claims 1-18. As such, Applicants respectfully request that the Examiner rejoins Group II with Group I.

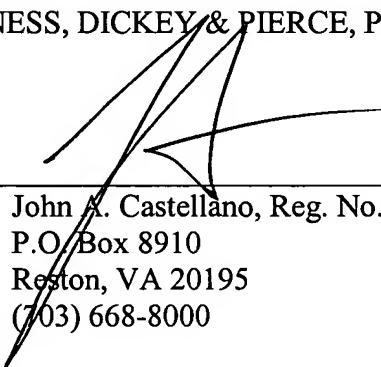
For all of the above stated reasons, reconsideration and withdrawal of the outstanding restriction/election requirement and favorable allowance of all claims in the instant application are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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By



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